

APPEAL NO. 022011  
FILED SEPTEMBER 23, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 15, 2002. With respect to the issues before her, the hearing officer determined that the respondent's (claimant) compensable injury includes spondylolisthesis at L5, degenerative disc disease, left sciatica, lumbar facet syndrome, and L5 pars defect; and that the claimant had disability beginning on January 9, 2002, and continuing through the date of the hearing. In its appeal, the appellant (carrier) argues that the hearing officer's extent-of-injury determination is against the great weight of the evidence. The carrier also asserts error in the hearing officer's admission of five of the claimant's exhibits. In his response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

Initially, we will consider the carrier's assertion that the hearing officer erred in admitting Claimant's Exhibit Nos. 3, 7, 8, 9, and 10. The benefit review conference was held in this case on May 29, 2002. Thus, the 15-day deadline for exchanging exhibits established in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)) was June 13, 2002. The claimant's attorney exchanged Exhibit Nos. 3, 9, and 10 on June 14, 2002. The attorney explained that he was ill in the week preceding June 13, 2002, and the hearing officer noted that she was aware of the attorney's illness because several hearings had had to be rescheduled during his illness. Thus, she determined that there was good cause for the late exchange. We cannot agree that the hearing officer abused her discretion in finding good cause based upon illness. As such, she did not err in admitting Claimant's Exhibit Nos. 3, 9, and 10. Exhibit Nos. 7 and 8 were exchanged on June 21, 2002. Exhibit No. 7 is records from Dr. C, a doctor to whom the claimant was referred by his first treating doctor, and Exhibit No. 8 is a diagnostic test result ordered by Dr. C. The claimant's attorney argued that he did not determine that he needed the records from Dr. C until he received a report from the designated doctor addressing the extent issue, which referenced Dr. C's records. The hearing officer found that the records were obtained as soon as possible after the attorney realized they were necessary. The hearing officer erred in admitting Exhibit Nos. 7 and 8 because we cannot agree that the claimant's attorney should not have known until he received a report from the designated doctor that medical records from a referral doctor might be relevant to an extent-of-injury issue. Nonetheless, we cannot agree that the hearing officer's error in admitting those exhibits is reversible error in that they are cumulative of other evidence properly before the hearing officer. Thus, her admission of the challenged exhibits, while error, was not reversible error because its consideration "was not reasonably calculated to cause and probably did not cause the rendition of an improper judgment." Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

The hearing officer did not err in determining that the claimant's compensable injury included spondylolisthesis at L5, degenerative disc disease, left sciatica, lumbar facet syndrome, and L5 pars defect and that the claimant had disability, as a result of his compensable injury, from January 9, 2002, through the date of the hearing. Those issues presented questions of fact for the hearing officer. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. There was conflicting evidence on the issues before the hearing officer and she was acting within her province as the finder of fact in resolving those conflicts and inconsistencies in favor of the claimant. Nothing in our review of the record demonstrates that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb the extent-of-injury and disability determinations on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBERT PARNELL  
8144 WALNUT HILL LANE, SUITE 1600  
DALLAS, TEXAS 75231-4813.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Margaret L. Turner  
Appeals Judge